The Law Commission

Working Paper No. 93

Transfer of Land

Formalities for Deeds and Escrows

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The Law Commission was set up by section 1 of the Law Commissions Act 1985 for the purpose of promoting the reform of the law.

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This Working Paper, completed on 30 July 1985, is circulated for comment and criticism only.

It does not represent the final views of the Law Commission.

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FORMALITIES FOR DEEDS AND ESCROWS

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Summary

In this Working Paper, the Law Commission examine, primarily as part of our programme for the simplification of conveyancing, the formalities required for the execution of a deed and the law relating to escrows. We provisionally propose that sealing and delivery should be abolished. Instead they should be replaced with requirements of signature and attestation. A document should be clear on its face that it is intended to be a deed. The law relating to escrows would in consequence be changed so that instead of only delivery being subject to conditions, it would, as now, be possible to make the operation of the deed itseld to be subject to express conditions.

All the proposals in the paper are merely provisional and its purpose is to obtain views on them, not only from practitioners and other legal experts but also from the public.

THE LAW COMMISSION

ITEM IX OF THE FIRST PROGRAMME

TRANSFER OF LAND

FORMALITIES FOR DEEDS AND ESCROWS

INTRODUCTION

1.1 In Item IX of its First Programme, the Law Commission undertook to examine those areas of property law where reform would lead to the simplification of conveyancing. As part of that programme we are now examining the law relating to deeds and escrows. It has been suggested from time to time that the law in this area is obscure and inappropriate to modern needs.[1] Our initial view is that these criticisms are valid and we are therefore putting forward some proposals for change. However we would emphasise that we have not formed any final views, and we hope that there will be wide-ranging discussion of our proposals.

1.2 We should first make clear the scope of this project. We are not now considering whether the law should insist on a deed on the occasions where it at present does so, nor are we looking at the effect which

using a deed has on certain transactions. In this paper we are concerned with two aspects of the lawrelating to deeds: first, the formalities required for the execution of a deed, and, secondly, the law relating to escrows, that is, documents which do not become deeds until some condition is fulfilled. It may be that other areas of the law relating to deeds do require examination, including the basic question of the need for deeds at all in the modern law, and we would be pleased to receive views on this. So far as we are aware, the various proposals set out in this paper relating to the formalities for deeds and escrows involve in themselves no adverse effects upon any transaction or matter where deeds are currently used. However, our attention has been concentrated on conveyancing and other property transactions and documents, so that we should be glad if unforeseen consequences in other areas were pointed out to us. Further, the discussion concerning formalities of deeds which follows refers to deeds executed by individuals. It is not intended that these proposals should alter the law relating to the formalities attending execution of documents as deeds by bodies corporate. The proposals relating to escrows would, however, affect their use by bodies corporate.

THE LEGAL NATURE AND EFFECT OF A DEED

2.1 A deed has been defined as a document "whereby an interest, right, or property passes, or an obligation binding on some person is created, or which is in affirmance of some act whereby an interest, right, or property has passed."[2] Probably the best

known occasion, so far as laymen are concerned, when a deed is used is for the conveyance of land: section 52 of the Law of Property Act 1925 makes all conveyances of interests in land void for the purpose of conveying or creating a legal estate unless made by deed.[3] Also a deed is used for making a binding obligation without the need for consideration to pass. In these two cases failure to use a deed will render the transaction completely ineffective at law.[4] Using a deed may therefore create obligations which would not otherwise exist. For example, when one person simply promises without any promise in return to pay money to another: if the promise is made by deed, the other person may enforce the liability if the money is not paid; if there is no deed there will be no right to sue, because it is a bare promise not supported by consideration.

2.2 A receipt given in the body of a deed operates as a sufficient discharge of the obligation to pay without any further receipt being indorsed on the deed.[5] Such a deed, if produced by a solicitor, is a sufficient authority to the person liable to pay for him to pay the solicitor without the solicitor producing any other authority from the person who executed the deed.[6] Again a receipt in a deed is treated as sufficient evidence, in favour of a subsequent purchaser without notice that the money was not paid, that the whole amount was paid.[7] These provisions show how, apart from conveying the legal estate, deeds were always envisaged as central to the conveyancing transaction, since without these provisions additional receipts and authorities might have been required and purchasers might have to make additional enquiries.[8]

2.3 One further area of the law containing provisions special to the use of deeds is the limitation of actions.[9] Thus the period of limitation for actions relating to a contract made by deed is twelve years, rather than the six years usually applicable to actions in contract.[10]

THE NEED FOR FORMALITY

3.1 Because of the significant effect that executing a deed can have, it seems clear to us that there must be some features of a deed which distinguish it from other documents. Any special formalities will necessarily cause some difficulties when they are accidentally omitted. There are bound to be people who are unaware of them.[11] However we consider that this is inevitable. The difficulties can be minimised by limiting the formalities to those that are necessary to achieve the purpose for which they are required.

3.2 What then are the aims of the formalities for making a deed? We would suggest that there are three main aims:[12]

(a) cautionary: that is, trying to ensure that the maker does not enter into the transaction without realising what he is doing;

(b) evidential: providing evidence that the maker did enter into a transaction, and evidence of its terms;

(c) labelling: making it apparent to third parties what kind of a document it is and what its effect is to be.

All are equally important in view of what we have said about the effect that the use of a deed can have.

THE PRESENT LAW

4.1 At present there are four formalities required for a valid deed. There must be writing on paper (or parchment),[13] sealing, a signature or mark[14] and delivery. Attestation of a signature is not a requirement and yet is common practice. While the law has long been precise as to which formalities are necessary, there is some uncertainty as to how they have to be carried out.

(i) Sealing

4.2 In practice, sealing today is for most individuals a meaningless exercise involving sticking a small circle of red adhesive paper onto the document. It is probably not fixed to the document by the grantor himself, but by his solicitor. As long ago as 1937 it was said that " ... a seal nowadays is very much in the nature of a legal fiction ... It is the party's signature, and not his seal, which in fact authenticates the document ..."[15] More recently Lord

Wilberforce has suggested the removal of "this medieval doctrine of the seal."[16] He continued " ... sealing is now a completely fictitious matter ... I would have hoped that we might have got rid of that mumbo-jumbo and aligned ourselves with most other civilised countries."[17]

4.3 Quite apart from the lack of any reason of substance for requiring a seal, the law as to what constitutes a valid seal is still unclear. The Court of Appeal in First National Securities Ltd. v. Jones[18] held that a document which had no wax or wafer seal but which had a circle with the letters "L.S." printed on it was capable of being a deed. It was sufficient that the document purported to be a deed and indicated where the seal should be.[19] However, in Re Smith[20], an earlier Court of Appeal case, the Court refused to presume due sealing despite the words "sealed with my seal" because there was no wafer, wax seal or other visible mark. It may thus be unclear to a layman what the effect of omitting a wax or wafer seal will be. Judicial relaxation of the strict requirements of a seal has been criticised[21] as creating uncertainty.

(ii) Delivery

4.4 Originally delivery involved a physical handing over of the deed which obviously signified the intention of the grantor of the deed to be bound by it.[22] However a deed is now effectively delivered in law "as soon as there are acts or words sufficient to shew that it is intended by the party to be executed as

his deed presently binding on him"[23]. It is thus essentially a question of the grantor's intention, but it does not matter whether this intention is communicated to the grantee provided it is in fact evinced by some sufficent act or words.[24] Since delivery no longer requires any physical handing over, a deed may be taken as delivered even when kept with the grantor's own papers if there is evidence that he evinced an intention to be bound by it. Laymen might well think the word "delivery" here to be a dangerous misnomer as it does not accord with their understanding of the word. This may lead them to believe that until the deed is handed over to "the other side" it is still capable of recall. Another problem in practice is that, since delivery must be the final formality, a deed signed after delivery must be redelivered. At present, the inconvenient and perhaps unnecessary rule is that an agent can only deliver a deed for his principal if he is authorised to do so by deed.[25] However, once delivered, the grantor cannot revoke the deed, unless power to do so has been expressly reserved.

(iii) Signature

4.5 A signature need not be in handwriting. A rubber stamp with facsimile signature or anything similar which makes clear an intention to authenticate the deed should be sufficient in law.[26] However in 1954, the Court of Appeal agreed that as a matter of practice the use of a rubber stamp to sign a document is undesirable, since such a method of signing does not

carry without the same authenticity or warrant of responsibility as a written signature. Lord Denning, dissenting but agreeing on this point, said: "The virtue of a signature lies in the fact that no two persons write exactly alike, and so it carries on the face of it a guarantee that the person who signs has given his personal attention to the document."[27] Accordingly in practice it appears generally accepted that, irrespective of what may suffice in law, the signature on a deed should be written, pen in hand. In practice also such a signature would be attested.

ESCROWS

5.1 An escrow has been defined as follows: "If an instrument be delivered to take effect on the happening of a specified event, or upon condition that it is not to be operative until some condition is performed, then pending the happening of the event or the performance of the condition the instrument is called an escrow."[28] There are two established restrictions on the type of condition which can be imposed. The delivery cannot be conditional on the death of the grantor as this would amount to a testamentary disposition and so must be effected as a will, and it must not be contrary to public policy or illegal.[29] The conditions may be express but are more often implied. When the conditions upon which an instrument is delivered are implied, it may not always be clear what has to be done. Furthermore it may be unclear when a condition has to be fulfilled. Here the courts have adopted two alternative but similar

approaches. One is to say that they will, in accordance with equitable principles, have regard to what would be a reasonable time.[30] The other is to consider the time-limit for fulfilment to be an implied part of the condition itself, and so to look to the condition to ascertain the time, rather than to any imprecise concept of reasonableness.[31] Once a document has been delivered in escrow it cannot be recalled and, once the condition is fulfilled, it becomes effective and binding as a deed.

5.2 Where a person is selling land, he often signs and seals the conveyance and hands or sends it to his solicitor ready for completion of the transaction. Many might think that the conveyance has not been delivered, but that it will be delivered by his solicitor on completion. Such a conclusion, although understandable, is unlikely to be correct in law, because of the rule that an agent, such as a solicitor, has to be appointed by deed to have power to deliver a deed[32] and in practice there will be no such appointment (the additional execution of a power of attorney for this single purpose would seem to involve an unacceptable complication in conveyancing). It is clearly not intended that the legal estate should vest in the purchaser as soon as the conveyance is executed (i.e. prior to completion). It must therefore be the case that the conveyance is delivered in escrow subject to the condition of completion taking place. What in fact amounts to completion, however, may not be clear. Completion is usually taken to be the execution of a deed of conveyance of the property by the vendor and

payment of the purchase price by the purchaser together with the final settlement of business.[33] However it has been held, on the one hand, that completion involves the purchaser accepting the deed,[34] and, on the other, that a lease can effectively be granted without any acceptance on the part of the lessee.[35]

5.3 When a lease is granted, in practice, the lessor will execute the lease and the lessee will execute a counterpart. The parties are unlikely to consider the lease binding until the two parts have been exchanged.[36] However, unless the lessor has delivered the lease as an escrow, conditional on execution of the counterpart, the lease will take effect immediately.[37] It will in any event be binding upon fulfilment of the condition[38] so that if the condition is simply execution of a counterpart, rather than actual exchange, the lease does not remain open to negotiation pending exchange, but in practice it is probably treated as though that were the case.

5.4 Not only is the document binding as a deed upon fulfilment of the condition, but the deed is to be treated as having been executed absolutely and effectively as at the time of delivery.[39] It follows that the death of the grantor in the meantime does not affect the operation of the deed [40] and the grantor must have had the legal capacity to convey at the time of the delivery as an escrow.

5.5 When all the conditions of an escrow have been satisfied, the title of the grantee relates back to the date of delivery. So, for example, where a

lease has been delivered in escrow, once the conditions are fulfilled, the lessee may have to pay the rent from the date of delivery. It is somewhat surprising that despite the fact that escrows have been in existence for a long time, this very practical point has only recently been decided in the Court of Appeal, and even then only by a majority decision.[41] The relation back does not operate to affect third parties[42] and the grantee does not, while the conditions are unfulfilled, have a title which enables him to deal with third parties.[43] However, if he does so, they should acquire a good title when the grantee does,[44] but it is far from clear whether this will date from fulfilment of the condition of the escrow or whether it also will operate retrospectively.

APPROACH IN OTHER COUNTRIES

6.1 Countries differ greatly in the extent to which they require formalities for certain documents. The various approaches may depend upon differing cultural attitudes towards the significance of putting matters into writing, different legal attitudes as to which transactions require formalities; or the fear of forgery which, for different transactions, may be more or less of a problem. Many European countries require more formalities than we do, expecting important documents to be signed in front of a notary or similar dignitary. However, in the more readily comparable jurisdictions of New Zealand and Australia there has been a move away from the seal. In New Zealand the

requirements of sealing and delivery were abolished in 1952: a signature and attestation are now sufficient.[45] No Australian state has yet abolished delivery, but sealing has already been abolished as an absolute requirement in three,[46] and its abolition has been recommended in one other.[47] Rather than completely abolishing the requirement of sealing, however, the Australian States have generally provided that the deed is not invalid if it is not sealed provided that there is an attested signature and the document is expressed to be a deed. So, for example, s. 73A of the Property Law Act 1958 (Vic)[48] reads: "After this section comes into operation, every instrument, executed by an individual and which is signed in the presence of an attesting witness and expressed to be delivered as a deed, shall be a deed, notwithstanding that it has not been sealed." In New South Wales a deed which is signed and attested in accordance with the statute is deemed to be sealed if expressed to be so.[49]

6.2 In the United States of America, on the other hand, the necessity for a seal on a "deed" is now completely abolished in at least thirty-four states[50] whereas delivery is still required by all fifty states but this also requires acceptance by the grantee.[51] The Uniform Act, recommended for enactment in all states, provides for the following formalities:

> "(a) Except for a lease for one year or less, a conveyance must;
>
> (1) reasonably identify the grantor, the grantee and the real estate;

(2) manifest an intent to make a present transfer of an interest in the real estate; and

(3) be in writing and signed by the grantor or his representative;

(b) ...

(c) A conveyance does not require an acknowledgment, seal or witness"

However in two states,[52] attestation is required to make the deed valid. In others it is valid without attestation, but requires attestation if it is to be admissible in litigation.[53]

OTHER REFORM PROPOSALS

7.1 The Government's Conveyancing Committee, in its Second Report, considered this area of the law, although no specific recommendations were made.[54] Abolition of sealing was considered, as was a requirement of attestation, although it was thought that there might be difficulties in distinguishing deeds from other documents. So far as escrows were concerned, the view was expressed that the technical implications of escrows were often not understood and that they might be abolished and replaced with the existing rules as to conditional contracts. Thus if a deed was not intended to have an immediate effect, the

conditions relating to when and how it came into effect would be expressed in the document itself.

OUR PROPOSALS FOR DEEDS

8.1 Our proposals for reform fall into two parts. First, those which relate to the formalities required for a deed, and secondly, those which relate to escrows.

8.2 Existing formalities

(i) Writing on paper or parchment This is probably the least controversial of the present requirements, and yet recent technological developments mean that it cannot be left unquestioned. Should a deed have to exist on paper? Could it not exist only on a computer disk or in some other electronic form? Alternatively might not a tape or a video of the grantor reciting the terms be sufficient? With the first two queries there are real problems of verification in the sense of ensuring that the grantor did in fact intend to make an instrument constituting a deed. However, it may be possible to devise satisfactory alternatives to the signature as a method of showing the grantor's intention to authenticate the transaction[55] and we would particularly welcome further information and views upon this possibility. With all of

these alternative methods there may be problems of storage and of retrieval of the information if the equipment on which they are recorded becomes obsolete. At present, and without precluding discussion of possible change in the future, we think that the requirement of writing on some permanent substance should be retained, though perhaps extended to cover substances other than paper or parchment.

(ii) The seal We consider that the seal should be abolished[56] as a necessary requirement for a deed. Invalidating a document because of the lack of a small circle of red paper may well seem to laymen, if not to lawyers, to be a clear illustration of the antiquated state of some areas of the English law. The seal is a redundant formality without substantive purpose and easily overlooked (but compare para. 8.3(ii) below).

(iii) Signature We believe this should be retained as a requirement. It helps to fulfil both the cautionary and evidential functions of a deed. Most people, we think, are aware that in signing a document they are committing themselves to some extent, and, while signatures can of course be forged, they are of some help in proving the validity or otherwise of the deed. As we have seen, a signature need not be by handwriting and, for example, can be a rubber stamp. It would be

difficult to change this for deeds and not for other documents, and we therefore make no proposals on the point in this paper. However, we would be interested to learn whether this aspect of the law is seen to give rise to difficulties and whether reform is necessary as a matter of general law. Another substantial issue on which we would like views is whether there should be a provision that a deed should be signed by all the persons named as parties to it. Such a requirement would necessarily introduce complications into conveyancing. It would import an element of acceptance by grantees and might give rise to questions of capacity which could not simplify the interpretation of deeds.[57] At present a large number of conveyances and transfers are executed by the vendor only. To require them to be executed by the purchaser as well would be a material addition to the cost and delay of conveyancing. Also, if such a requirement were to be introduced, it might again become necessary to be able to distinguish accurately between deeds poll (which are not technically made between parties but with the world) and deeds which are indentures (which necessarily have parties).[58] This would be reintroducing technicalities into this branch of the law which, it may well be thought, should only be done if there are clear reasons for so doing.

(iv) Delivery We consider that the requirement of delivery should be abolished. From being a matter of physical fact, it has become a question of the deliverer's intention to be bound. Although, as a rule, this intention does have to be sufficiently evinced, it need not be communicated to any person in particular (i.e. not necessarily to the person taking under the deed) and may be difficult to prove.[59] A document may on the face of it be a deed but without the extrinsic element of delivery it will not be one. We consider that the law would be simplified and in general there could be no adverse effects of substance if the requirement of delivery were abolished. Deeds would therefore take effect as such as soon as all the other formalities were completed. If the grantor wished to postpone the actual operation of the deed, for example by preventing the grantee from obtaining the legal estate until the price were paid, he could do so by imposing express conditions to that effect.[60]

An alternative suggestion to be considered, however, is that the requirement of delivery should be retained but restrictively defined so as to involve physical delivery.[61] It would appear impracticable to have a general rule that delivery should be to the other party or parties to the deed, not only because there

may be none (as with a deed poll) but also because the other party may be unable, as a matter of legal or physical capacity, to take delivery. Instead it might seem possible to provide that a deed is not delivered until it passes out of the maker's control, but again this would not satisfactorily cover, for example, deeds declaring trusts or deeds of covenant with infants where there is good reason for the maker to keep control.

A further suggestion of practical convenience which we would tentatively support could be a relaxation of the rule that an agent, to execute a document (including merely delivering it) as a deed, must be appointed by deed: the delivery, if not the signature, could be effectively authorised less formally, thus enabling a solicitor actually to deliver a deed or conveyance at completion without calling in aid the concept of an escrow in lieu of a power of attorney.

8.3 Additional requirements It would be possible to say that a signature alone should suffice as it does for contracts for the sale of land and declarations of trusts of land. However, this alone could not ensure that deeds are not executed inadvertently and would provide no means of distinguishing between, for example, an unenforceable agreement lacking consideration and an enforceable one made by deed. We therefore provisionally recommend that two additional requirements be introduced:

(i) Attestation It is already common practice for the signature on a deed to be attested[62] and in registered conveyancing attestation is already obligatory.[63] We think this should be made a general requirement.[64] This would distinguish deeds from mere signed documents; would emphasise to the person executing the deed the importance of his act; would give rise to an evidential presumption of due execution;[65] and might assist in the prevention or at least the detection of forgery. In our opinion any such requirement should be restricted to one witness but could otherwise follow the recently enacted provision for the attestation of wills:[66]

"No will shall be valid unless-

(a) it is in writing, and signed by the testator, or by some other person in his presence and by his direction; and

(b) it appears that the testator intended by his signature to give effect to the will; and

(c) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and

(d) each witness either-

(i) attests and signs the will; or

(ii) acknowledges his signature, in the presence of the testator (but not necessarily in the presence of any other witness),

but no form of attestation shall be necessary."

This would avoid the former difficulties about acknowledgement by witnesses. Also restriction to one would avoid the problems caused by the need for the two (or more) witnesses to be present at the same time.

Should there be any restrictions on who may be the witness? The restrictions usually considered are those preventing a party to the deed,[67] or a spouse, from being a competent witness. Where wills are concerned a beneficiary who witnesses does not invalidate the will but cannot take under it.[68] Such a result would not be appropriate in deeds many of which would become wholly or partly inoperative if one party were excluded from benefiting under it. We would therefore conclude that the deed must either be valid or not. To allow a party to the deed to witness might be thought undesirable: if, for example, a purchaser may validly witness his vendor's signature, this would increase the risk of

fraud on the part of the purchaser and reduce the presumptive value of his attestation, although it would equally reduce the risk of forgery of the vendor's signature by some other person. However, if an independent witness is considered necessary to avoid fraud, then a number of other people should probably be excluded (e.g. a party's employee or agent or an attorney executing for a party). Despite considerations of independence, we would not exclude such people as spouses, or other relatives from effectively attesting the parties' signatures. One reason for this is that as far as possible it should be clear on the face of the document whether or not it has been validly witnessed: it would follow that only a named party to the deed should be precluded from being a valid witness. Apart from this aspect, we would assume that witnesses must otherwise be competent or appropriate, e.g. not blind but also of sufficient legal capacity to give evidence. If so, since such competence would normally not be shown on the face of the document, there should probably be a rebuttable presumption of capacity to be a witness.[69] However, it may be thought that the provision applying to wills ought to operate here too: this is that "...if any person who shall attest the execution of a will shall at the time of the execution thereof or at any time afterwards, be incompetent to be admitted a

witness to prove the execution thereof, such will shall not on that account be invalid".[70] Views as to the restrictions, if any, which should apply are requested.

(ii) Face value We consider that a requirement of an attested signature is not on its own sufficient to distinguish deeds from other documents. We have considered various possibilities, for example, that there should be a prescribed attestation clause. Our preferred proposal is that it should be clear on the face of the document that it is intended to be a deed. Generally this will be apparent because the word "deed" will be used. Alternatively a seal might still be used, and we would suggest that this should explicitly be evidence that the document is a deed. Further, we suggest that a court should be free to find a document to be a deed even if it is not expressed to be such but only if there is evidence for such a finding within the document itself.[71] It seems essential to avoid a situation where a document is held to be a deed simply because it was used in a transaction where a deed is required. This would amount to abolishing formalities for deeds altogether.

For example, as we have already said, section 52 of the Law of Property Act 1925 provides that all conveyances of interests in

land are void for the purpose of conveying or creating a legal estate unless made by deed. Thus, to say that a conveyance is deemed to be a deed because the transaction is one where a deed is required would be to say that the formality was complied with because the formality was required! On the other hand a clause within the document to the effect that it was intended to fulfil the requirements of section 52 should be sufficient evidence for the document to be accepted as a deed. In this connection, however, it would appear necessary to amend section 57 of the Law of Property Act 1925, which provides that a deed may be described (at its commencement or otherwise) as a conveyance, lease, mortgage etc., so that the word "deed" does not at present have to be used. It should be made clear that, for the section to apply, there must actually be a deed and that the mere use of words like "lease" or "mortgage" is not sufficient evidence that a deed is intended. Extrinsic evidence should be excluded to prevent uncertainty arising at a later date.[72] It must be clear from examination of the document alone whether or not it is a deed. This requirement should occasion no difficulties in practice: the commencement could still conveniently describe the operation of the document, whilst the nature of the document itself could continue to be properly indicated by the traditional words of the testatum; "NOW THIS DEED WITNESSETH..."[73]

8.4 The previous proposals do not necessarily preclude the possibility of retaining the present requirements of a deed, alongside any new formalities, as an alternative. In other words, a document signed, sealed and delivered as at present could still be recognised as a deed, provided that it was also attested in accordance, in effect, with current practice. Provisionally we do not recommend this as desirable.

REFORM OF ESCROWS

9.1 The present law of escrows has already been described, as have some of the difficulties which arise from it. Even if no other changes were contemplated in the law of deeds, there would be a good case for reform of this aspect. It has recently been said that "The law of escrow is steeped in much ancient learning and has been found on occasions not altogether satisfactory in modern times".[74] If our suggestion that delivery, be abolished is accepted, then the law relating to escrows has to be changed because an escrow at present, is a document delivered as a deed but with the delivery subject to conditions. If there is to be no delivery, then a document will take effect unconditionally as a deed as soon as it has been signed and witnessed. This would be highly inconvenient in the very common situation where a client executes a conveyance and sends it to his solicitor to complete the transaction. At present it is assumed that he delivers the conveyance to the solicitor in escrow with the implied condition that it

does not take effect until the purchase price has been paid and other terms of the contract complied with.

9.2 We suggest that rather than the delivery being subject to conditions it should be sufficient, as is already possible, to make the operation of a deed itself subject to certain conditions being fulfilled. As with escrows, the deed should be binding when executed but it would not have full effect unless and until the conditions were fulfilled. We further think that the law would be improved if the conditions had to be expressly stated in the deed. The implications of this in conveyancing practice are considered further below (paras. 9.6 and 9.7).

9.3 It may be thought unnecessary to insist that a deed is incapable of unilateral recall once executed. However we think that this adds to the certainty of deeds, in that the other party then knows exactly what he has to do in order to make the deed effective. If the deed were capable of recall, we doubt whether it would be possible to retain the rule that the deed is effective despite the death of the grantor before the conditions are fulfilled. In addition, if the conditions were to be expressed in the deed, it is more likely that the person executing it would appreciate the finality of his act, which, it is probably true to say, he may well not be at present. However, we would particularly welcome views on this question.

9.4 It was once said, albeit with reference to bills of exchange, that "It would perplex the commercial transactions of mankind, if paper securities

of this kind were issued out into the world encumbered with conditions and contingencies, and if the persons to whom they were offered in negotiation were obliged to enquire when these uncertain events would probably be reduced to a certainty".[75] Hence it is not possible to attach conditions to a bill of exchange.[76] In so far as deeds serve as documents of title which may pass through many hands, they have a similarity to bills of exchange, and it is arguable that it should not be possible to attach conditions to deeds either. However, as we have shown, because of the way in which deeds are commonly executed, we think it essential that grantors should remain able to attach conditions to their operation. This should not cause problems for a third party, provided that the conditions are expressly stated: and provided that their nature is such that compliance can be established. Although enquiries to discover whether conditions have been satisfied may sometimes be needed, we do not wish unnecessarily to increase the formalities of conveyancing. We therefore suggest below provisions which might be adopted to alleviate any practical difficulties.

9.5 It is not reasonable to expect a third party to make enquiries about conditions which he does not know to exist. At present the conditions attached to an escrow may be express but are often implied. It may be quite unclear, factually or even legally, what they are. If an assignment of a lease is delivered subject to the landlord's consent being obtained, is the condition fulfilled when the landlord indicates consent will be forthcoming or only when a formal licence to assign has been executed? As we have said,

we consider that any conditions attached to the operation of a deed should be express. It may be unnecessarily cumbersome for them to be all written out in the deed, but it may perhaps be acceptable if they were contained in another document and referred to in the deed, so that a deed might state: "This deed will not have any effect until the conditions contained in clause ... of the contract dated ... are fulfilled". However, if this last suggestion were to be supported, we would incline to the view that it should only affect the immediate parties to the deed: to expect any third party to pursue cross-references of this sort would appear an undesirable development doing nothing to simplify the investigation of title; i.e. third parties need only enquire about conditions which are actually written out in the deed.

9.6 In this connection, it may prove desirable to enact a provision along the lines of section 68 of the Law of Property Act 1925 to the effect that a statement in the body of a deed that an escrow condition has been fulfilled should, in favour of a subsequent purchaser not having notice that the condition has not been fulfilled, be sufficient evidence of the fulfilment of the condition. In addition it should be possible to devise certain statutory conditions which would be brought into operation by the use of the appropriate phrase, so for example, "subject to completion" could always imply that the deed would not operate unless the consideration money had been paid (or perhaps unless particularly specified conditions in the contract which led to the deed had been fulfilled), and "subject to

consent" could imply, in an assignment of a lease, that the formal consent of the landlord was a condition. A suitable set of statutory conditions could provide the necessary certainty while not adding greatly to the present length of deeds. If this proposal is thought acceptable, the Standing Committee on Conveyancing as recommended by the Government's Conveyancing Committee may be asked to consider the scope and drafting of such a set of statutory conditions. We would, however, welcome suggestions from other sources.

9.7 A more radical extension of any reform along these lines could be a statutory presumption that unless evidence is shown to the contrary, escrow conditions are presumed fulfilled after a specified time, for example one year. After such time the deed would, in favour of subsequent purchasers without notice to the contrary, be presumed effective with all the conditions fulfilled.

9.8 The remaining question is the time at which the deed should take effect. Here we would suggest that there may be two different dates which should not be confused. First, there is the date when the deed is executed. At that date, it becomes a valid deed incapable of recall by the grantor (assuming that an express power of revocation has not been reserved). Secondly, there is the date when the provisions of the deed take effect so as, for example, to pass the legal estate. At present, the law provides that, upon performance of the condition, the deed is deemed for purposes of title to have been executed retrospectively as at the date of delivery as an escrow and the legal

estate, if applicable, passed on that date. However, this does not of itself create rights, for example, in respect of receipt of rents or service of notice to quit, nor does the doctrine of "relation back"[77] operate so as to affect dealings with third parties.

9.9 As at what date should the provisions of a deed come into effect if it is executed subject to conditions? We would suggest that there are four possible dates:-

(i) the date agreed by the parties and expressed as such in the deed; this is often the case now with leases, which are executed on one date, but only come into force on another;

(ii) the date of execution of the deed;

(iii) the date when the conditions should have been fulfilled; or

(iv) the date when they actually are fulfilled.

In practice, we would expect the parties to agree the date and include it in the deed as part and parcel of the expressed conditions. If they have not done this, while we have not formed a final view, we prefer the fourth possibility. Both the second and third involve a retrospective element, so that, once the conditions are fulfilled, the title of the grantee relates back to an earlier date. We think that such retrospective operation would in general be undesirable, especially if it occurs automatically as an implication of law

instead of depending upon an express agreement between the parties.[78] Adopting the fourth possibility would bring the law in this area into line with that relating to conditional contracts. That said, however, it could be argued that either possibility (ii) or possibility (iii) should lead to greater certainty than possibility (iv) because it would be clear from the deed itself on which date the legal estate passed.

9.10 While, as we have said, we would prefer the legal estate to pass on fulfilment of the conditions (assuming no express agreement as to this), if it were thought right that the legal estate should pass as at the date of execution, or as at the intended date of fulfilment, then it becomes necessary to consider the extent to which title should relate back. At present a deed relates back to delivery so that, for example, a lessee may be liable for the rent from that date. Again we have reached no final conclusion on this point, but we think that if the deed must relate back it should relate back for all purposes or not at all, although third parties should still not be affected.

CORPORATIONS

10.1 Whereas abolition of the seal for individuals seems sensible, where corporations are concerned it appears that a seal still has a valuable part to play. The seal of a corporation is not simply a hollow formality but a real symbol of the corporation, specific to that body. A corporation aggregate cannot

itself have a signature; attestation is already a requirement;[79] and sealing imports delivery,[80] which may be in escrow. Accordingly, our proposals, as stated earlier, do not need to apply to the execution of deeds by bodies corporate, except for the proposals as to delivery in escrow, which should apply equally.

LAND REGISTRY

11.1 A Land Registry transfer is at present a deed,[81] even though the legal estate or interest in the land does not pass until registration.[82] However, it may be thought that there is no good reason why a Land Registry transfer should be a deed. In substance it may be seen as simply an authority to the Land Registrar to register a change of proprietor so that it could be in any form appropriate to such an authority. Nevertheless, against this, it may be forcefully pointed out that, even if a Land Registry transfer does not operate in rem (i.e. it does not of itself affect the title to the land), it does operate in personam as between the parties to create rights and obligations which are binding and enforceable between them. In addition, the consequences of including a receipt clause, which are of utility in conveyancing practice, depend upon the document being a deed.[83] Accordingly a strong argument can be made out for there being an equal need for formalities here (i.e. corresponding to the need indicated in paras. 3.1 and 3.2 above). Our present preference is that there should be no change of substance in relation to Land Registry transfers: they should continue to be executed and operate as deeds.[84]

However, as to execution, our proposals as to the appropriate formalities should apply similarly; this will call for some slight amendment of the relevant prescribed form.[85] Land Registry transfers can at present be delivered in escrow although there can be no relation back as to title since the legal estate can only pass on registration. We see no reason of substance why our proposals for abolishing escrows in favour of deeds containing express conditions should not also be adopted for Land Registry transfers.[86] It would probably be necessary to provide that the Land Registry would not be affected with notice of the non-fulfilment of any condition.[87]

TRANSITIONAL PROVISIONS

12.1 Our proposals would introduce a new requirement for every deed, namely that the signature must be witnessed. Although this is already common practice (and in registered conveyancing not a new requirement), it is still important that there should be wide publicity about the change before it comes into force. We would therefore suggest that such a provision should not be brought into force for several months after the Act containing it is passed. Nevertheless we do not anticipate any major problems in this area.

12.2 We suggest that any changes should not take effect retrospectively. To invalidate deeds properly executed at the time is obviously unacceptable. However, it would be less unacceptable to validate as

deeds documents which complied with the new formalities but had not been sealed. It might well be thought wrong in principle to do this, as the formal validity of documents should be judged by the law in force at the time they were made, but we would welcome views as to this.

PRESIS OF PROPOSALS

13.1 We end with a precis of our provisional conclusions and proposals. We invite comments and criticism on them, and we repeat the hope that the publication of this Working Paper will result in a wide-ranging discussion both on the merits and on defects in our proposals.

13.2 Deeds

(a) Since there should continue to be deeds, some formalities to distinguish them from other documents are necessary. Such formalities should be as few and as simple as possible.

(b) Recent technological developments may have affected the need for writing.

(c) Sealing should be abolished.

(d) While the signature requirment should be retained, perhaps all parties to deeds should sign.

(e) The abolition of delivery would simplify the law. Physical delivery out of the maker's control might be subsituted, or else the appointment of agents to effect delivery might be made less formally.

(f) Attestation for all deeds is suggested, but some restrictions on witnesses might be desirable.

13.3 Escrows

(a) The implying of conditions can lead to great uncertainty.

(b) Decisions are inconsistent concerning conveyances and leases as escrows, and concerning acceptance by purchaser and lessee.

(c) There are also problems about "relation back", ie date of operation.

(d) Reform of the law of escrows is needed in any event.

(e) The making of deeds containing conditions for their operation should be adopted instead.

(f) The date of operation of a conditional deed might be the date of fulfilment of the conditions.

FOOTNOTES

1 For example, Lord Wilberforce, Hansard (H.L.), 25 February 1971, vol. 315, col. 1213, during the debate on the Powers of Attorney Bill; Goddard J. (as he then was) in the Sixth Interim Report of the Law Revision Committee (1937), Cmd. 5449.

2 Norton on Deeds 2nd ed., (1928), p. 3.

3 See para 11.1 for a discussion of deeds and registered title.

4 A conveyance may be effective in equity where consideration has passed, although equity will not give effect to a promise unsupported by consideration. However whether equity does give effect to the transaction is always a matter of the discretion of the court, albeit exercised on established principles, and the rights so created may not prevail against third parties.

5 L.P.A. 1925, s. 67.

6 Ibid., s. 69; the Administration of Justice Bill 1985, cl. 30(1)(a) would extend this to licensed conveyancers.

7 Ibid., s. 68; note that an unpaid vendor's lien will be void against a purchaser if it is not protected by registration under the L.C.A. 1972 or the L.R.A. 1925 unless it is an overriding interest.

8 Note too that the restrictions on unqualified persons drawing or preparing instruments for conveyancing purposes do not at present apply to agreements not under seal: Solicitors Act 1974 s. 22(3)(b) (cp. Administration of Justice Bill 1985, cl. 5(4)).

9 Abolition of the fixed stamp duty of 50p on all deeds was effected by the Finance Act 1985, s. 85 and Sched. 24 para. (e).

10 Limitation Act 1980, s. 8(1) referring to actions upon a "specialty"; for limitation purposes that word should be confined to deeds and contracts under seal (per Goddard L.J. in Leivers v. Barber, Walker & Co. [1943] 1 K.B. 385 at p. 398; approved in Central Electricity Board v. Halifax Corporation [1963] A.C. 785 H.L.).

11 For an example, see Report of Parliamentary Commissioner (1980), paras. 23-25, regarding deeds of covenant for income tax purposes.

12 For interesting discussions of the general problems raised by formality requirements see T.G. Youdan, "Formalities for trusts of land" [1984] C.L.J. 306 at pp. 314-315, and the articles referred to there at nn. 42 and 44.

13 Norton on Deeds 2nd ed., (1928) pp. 3-4.

14 L.P.A. 1925, s. 73.

15 Sixth Interim Report of the Law Revision Committee (1937), Cmd. 5449, p. 35.

16 Hansard (H.L.), 25 February 1971, vol. 315, col. 1213.

17 Loc. cit.

18 [1978] Ch. 109, and see Re Sandilands (1871) L.R. 6 C.P. 411 where it was held that a wax seal was unnecessary; deeds could be sealed in a wide variety of ways.

19 Also Stromdale & Ball Ltd. v. Burden [1952] Ch. 223 per Danckwerts J. at p. 230. "Meticulous persons executing a deed may still place their finger on the wax seal or wafer on the document, but it appears to me that, at the present day, if a party signs a document bearing wax or wafer or other indication of a seal, with the intention of executing the document as a deed, that is sufficient adoption or recognition of the seal to amount to due execution as a deed".

20 (1892) 67 L.T. 64.

21 D. Hoath, "The sealing of documents - fact or fiction", (1980) 43 M.L.R. 415.

22 D.E.C. Yale, "The Delivery of a Deed", [1970] C.L.J. 52.

23 Xenos v. Wickham, (1867) L.R. 2 HL 296; Alan Estates Ltd. v. W.G. Stores Ltd. [1982] Ch. 511.

24 Delivery may be inferred from conduct (Keith v. Pratt (1862) 10 W.R. 296) and has been inferred from the mere facts of signing and sealing (Hall v Bainbridge (1848) 12 Q.B. 699); but cp. per Kay L.J. in Powell v. London & Provincial Bank [1893] 2 Ch. 555 at pp. 565-566.

25 Re Seymour [1913] 1 Ch. 475, Powell v. London & Provincial Bank [1893] 2 Ch. 555.

26 Bennett v. Brumfitt (1867) L.R. 3 C.P. 28; Goodman v. Eban Ltd. [1954] 1 Q.B. 550; L.C.C. v. Agricultural Food Products Ltd. [1955] 2 Q.B. 218.

27 Goodman v. Eban Ltd. [1954] 1 Q.B. 550 at p. 561 per Lord Denning M.R. dissenting as to a particular point of statutory construction; see also L.C.C. v. Agricultural Food Products Ltd. [1955] 2 Q.B. 218 and per Walton J. in Graddage v. Haringey L.B.C. [1975] 1 W.L.R. 241 at p. 246 and per Michael Davies, J. in R v. Brentford Justices, ex parte Catlin [1975] Q.B. 455 at p. 462 as to facsimile signatures sufficing.

28 Norton on Deeds, 2nd ed., (1928) p. 18.

29 Cp. Plymouth Corporation v. Harvey [1971] 1 W.L.R. 549.

30 See Beesly v. Hallwood Estates Ltd. [1961] Ch. 105 per Harman L.J. at p. 118 and per Lord Evershed M.R. at p. 120.

31 Kingston v. Ambrian Investment Co. Ltd. [1975] 1 W.L.R. 161; Glessing v. Green [1975] 1 W.L.R. 863.

32 See per Joyce J. in Re Seymour [1913] 1 Ch. 475 at p. 481; also per Bowen L.J. in Powell v London & Provincial Bank [1893] 2 Ch. 555 at pp. 562 and 563.

33 Killner v. France [1946] 2 All E.R. 83; Maktoum v. South Lodge Flats Ltd. The Times, 22 April 1980; Re Atkins' Will Trusts [1974] 1 W.L.R. 761 at pp. 765-766.

34 Maktoum v. South Lodge Flats Ltd. The Times, 22 April 1980.

35 D'Silva v. Lister House Development Ltd. [1971] Ch. 17 and see Emmet on Title 18th ed., (1983), p. 230. See also (1970) 34 Conv. (N.S.) 145 especially at p. 147 where it was argued that "[t]he law ought to be reconsidered as a matter of urgency because it is impossible for the rules to be followed".

36 The rule as to formation of contracts relating to land by exchange was endorsed in Eccles v. Bryant & Pollock [1948] Ch. 93 C.A.

37 Luke v. South Kensington Hotel Company (1879) 11 Ch.D. 121 and Lady Naas v. Westminster Bank Ltd. [1940] A.C. 366.

38 Beesly v. Hallwood Estates Ltd. [1961] Ch. 105; Vincent v. Premo Enterprises Ltd. [1969] 2 Q.B. 609.

39 Graham v. Graham (1791) 1 Ves. 272.

40 Perryman's Case (1599) 5 Co. Rep. 84a.

41 The Court of Appeal in Alan Estates Ltd. v. W.G. Stores Ltd. [1982] Ch. 511 declined to follow the decision of Walton J. in Terrapin International Ltd. v. I.R.C. [1976] 1 W.L.R. 665.

42 Butler and Baker's Case (1591) 3 Co. Rep. 25a.

43 Security Trust Co. v. Royal Bank of Canada [1976] A.C. 503 P.C.

44 Church of England Building Society v. Piskor [1954] Ch. 553.

45 Property Law Act 1952 (N.Z.), s. 4.

46 In Victoria, Queensland and New South Wales.

47 See Report No. 35, Law Reform Commission of Tasmania, 1984.

48 Inserted by Property Law (Deeds) Act 1977.

49 Law of Property Act 1919 (N.S.W.), s. 38.

50 Powell on Real Property. 1984 Supplement (Matthew Binder N.Y.) p. 889.

51 Op. cit., p. 892.

52 Ohio and Connecticut.

53 Op. cit., p. 890.

54 (1985), paras. 7.12-7.13:

"Execution of Conveyance or Transfer

7.12 As well as submissions concerning the formalities controlling the formation of contracts for the sale or other disposition of houses and flats, we received representations as to the formalities governing the conveyance or transfer by which the transaction is completed. In general, a deed is required and execution of a deed by an individual requires sealing as well as signing (plus of course delivery). It was variously suggested to us that seals struck lay clients especially as an archaic requirement ripe for modernisation. Dissent seems difficult even though this purest of formalities nowadays cannot be said to cause much if any noticeable delay or difficulty or expense in the great majority of conveyancing transactions. However, repeal of the requirement of a seal should not necessarily detract from the status of documents as deeds, at least without further careful consideration of the implications, not merely as to passing legal estates in land but also as to the enforceability of voluntary promises and as to the periods of limitation applying to specialities. Accordingly, the idea gained ground that stipulating some words like 'signed as a deed' would constitute an attractive alternative formality. Additionally it could be made clear by statute that the traditional words 'signed sealed and delivered' would suffice in all cases to

constitute a document a deed without any need for an actual or otherwise purported sealing. Of course, this would preserve what might well still be dismissed as a mere formality in words rather than acts. For this reason it was submitted that some requirement of substance might be imposed, for example involving appropriate attestation. However, since the signatures to almost all legal documents are in practice already attested this submission would give rise to difficulties in distinguishing between documents which were and were not intended to operate as deeds. These observations, it should be noted, apply only to the execution of deeds by individuals, not by companies or corporations where no change in the requirements was proposed. It should also be noted that the growth in electronic communications and the problems with authenticating signatures are relevant in this context (see ante, paragraph 6.16).

Escrows

7.13 An allied issue concerned the delivery of a document in escrow, i.e. to be the deed of the party delivering it when and if certain conditions are satisfied. Escrows have been judicially described as 'a relic of medieval times'. Practical problems in modern conveyancing caused by the use of escrows primarily relate to four aspects of their operation: (1) the delivery of a conveyance in escrow is binding and irrevocable so that, for example, it is unaffected by the vendor's death; (2) the condition or conditions constituting the document an escrow do not have to be expressed or even communicated to the purchaser; (3) satisfaction of any condition appears subject to the uncertainties of being within a reasonable time; and (4) on satisfaction of the condition the conveyance will operate retrospectively to pass the legal estate and create

other rights and obligations as at the date of delivery of the document not as at the date of satisfaction of the condition. In practice, escrows are very often used but, it is thought, with the technical implications being overlooked or disregarded. The commonest example of such use occurs when the vendor signs the conveyance and returns it to his solicitor in advance of and ready for completion: the document will have been delivered by him in escrow on the condition, at least, of payment of the purchase price in due course. Accordingly, in the interests of certainty and understanding, there might appear much force in the suggestion that escrows as such should be abolished. Their operation should, however, be replaced by the existing rules as to conditional contracts. This would mean that, where the execution of a deed is not intended to be absolute and immediate, the precise intention and operation, specifying the conditions and any time-limit, should be expressed in the document itself. There seems no reason whatsoever why these observations should be restricted to the deeds of individuals."

55 See the Government's Conveyancing Committee's Second Report (1985), para. 6.16 where methods of authenticating messages sent electronically are considered.

56 Except for corporations aggregate.

57 See also s. 65 of the L.P.A. 1925 as to execution of a conveyance by a grantee being unnecessary for the reservation of a legal estate.

58 Cp. ss. 56(2) and 57 of the L.P.A. 1925.

59 But cp. cases cited in n. 24 above as to inferring delivery.

60 See the discussion of escrows, below; query whether such a condition would affect the conveyance of a legal estate within s. 1(1) of the L.P.A. 1925.

61 ".... it might be very helpful in modern life if there were some modification of the law, departing somewhat from the strictness of the old rule the effect of which my Lord has indicated, viz., that a man becomes bound when he executes a deed in the form usually adopted; there are evidentiary difficulties which from time to time must be met in establishing whether or not a man did speak or use some words or do some act sufficient to negative the prima facie presumed intention that by executing a document under seal and declaring that it is 'delivered' he has adopted it as immediately binding upon him. I think it might be more realistic to depend upon physical movement or legal control of the document after the time when it is sealed, so that it would become the law that some adoptive demonstration is required additionally to the mere affixing of the seal. Concentration upon the movement of the deed thereafter would make it easier to solve the question, has the maker by parting with it to such extent and manner as may be proved expressed an intention - indicated, demonstrated an intention - for it to be immediately binding, or demonstrated a suspensive intention that it shall not be immediately binding upon him but only binding if some particular event does occur? per Winn L.J. Vincent v. Premo Enterprises Ltd [1969] 2 Q.B. 609 at p. 623, C.A.

62 That is, signed or signature acknowledged in the presence of a witness who then signs.

63 See prescribed Form 19 in Sched. to L.R.R. 1925 and r. 98; cp. Powers of Attorney Act 1971, ss. 1(2),(3) and 9(2) requiring attestation in certain circumstances.

64 Although there is no requirement of attestation at present, a purchaser can insist that the execution of the deed is attested by some person appointed by him (L.P.A. 1925, s. 75).

65 Hope v. Harman (1847) 16 Q.B. 751 n; Stromdale & Ball Ltd. v. Burden [1952] Ch. 223; and First National Securities Ltd. v. Jones [1978] Ch. 109 C.A.

66 Wills Act 1837, s. 9 as substituted by Administration of Justice Act 1982, ss. 17, 73(6).

67 See Seal v. Claridge (1881) 7 Q.B.D. 516 at p. 519 per Lord Selborne L.C.:

> "I was at first surprised that no authority could be found directly in point; but no doubt the common sense of mankind has always rejected the notion that the party to a deed could also attest it."

68 Wills Act 1837, s. 15.

69 Cp. L.P.A. 1925, s. 15 as to presuming parties to be of full age.

70 Wills Act 1837, s. 14.

71 See Re Stirrup's Contract [1961] 1 W.L.R. 449, where the court was able to treat an assent under seal as a conveyance of the land, as it was the manifest intention of the parties that the land should have been conveyed by that document.

72 This would not, of course, exclude the possibility of rectification.

73 See, for example, Form Nos. 1,3,4 and 5 in the Sched. 5 to the L.P.A. 1925.

74 Bentray Investments Ltd. v. Venner Time Switches Ltd. (1984) 274 E.G. 43 per Stuart-Smith J. at p. 47.

75 Carlos v. Fancourt (1794) 5 T.R. 482 per Lord Kenyon at p. 485.

76 Bills of Exchange Act 1882, s. 3(1): "A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer."

77 For an authorative discussion of this doctrine see the case of Alan Estates Ltd v. W.G. Stores Ltd [1982] Ch. 511 C.A., where a right to rents did relate back to the date of delivery as this is what the parties intended.

78 In Alan Estates Lord Denning expressed the view that restrospective operation was "just" but in that case it appeared to be in accord with the parties' actual agreement, obligations under which one of the parties was seeking to repudiate.

79 See LPA 1925, s. 74.

80 See Emmet on Title 18th ed., (1983), pp. 575-576 as to the relevant authority.

81 L.R.R. 1925, Sched., Form 19 and see per Vaisey J. in Chelsea and Walham Green Building Society v. Armstrong [1951] Ch. 853 at p. 857.

82 L.R.A. 1925, ss. 19 and 22; see also s. 69, as well as ss. 20 and 23, for the proposition that a proprietor becomes such by virtue only of the registration, not the conveyance or transfer preceding this.

83 L.P.A. 1925, ss. 67, 68 and 69; see also para. 2.2; cp. s. 22(1)(a) of the Solicitors Act 1974 primarily prohibiting unqualified persons from preparing Land Registry transfers.

84 Cp. L.R.A. 1925, s. 38(1).

85 Form 19 in the Schedule to the LRR 1925 which as well as indicating a seal, includes the following attestation clause:

> Signed, sealed and delivered
> by the said A.B., in the
> presence of E.F., of &c. (Signature of A.B.)
> (Seal.)

Query: whether the reference to a signature includes a mark (c.p. L.P.A. 1925, s. 73)?

86 But cp. L.R.R. 1925, r. 98 and prescribed Forms 19 and 20 which do not cater for conditions but which may in practice be accepted, as adapted, by the Land Registry: see rr. 74 and 322.

87 Cp. L.R.A. 1925, s. 74 as to trusts.

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